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17 LE-VEL BRANDS LLC

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

**ENVIRONMENTAL RESEARCH  
CENTER, INC. a California non-profit  
corporation,**

**Plaintiff,**

**v.**

**LE-VEL BRANDS LLC and DOES 1-100**

**Defendants.**

**CASE NO. RG16831900**

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 20, 2016  
Trial Date: None set

**1. INTRODUCTION**

1.1 On September 21, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")

STIPULATED CONSENT JUDGMENT

CASE NO. RG16831900

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
2 (“Proposition 65”), against Le-Vel Brands LLC (“Le-Vel”) and Does 1-100.

3       **1.2**     ERC and Le-Vel are hereinafter referred to individually as a “Party” or  
4 collectively as the “Parties.”

5       **1.3**     ERC is a California non-profit corporation dedicated to, among other causes,  
6 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
7 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
8 encouraging corporate responsibility.

9       **1.4**     For purposes of this Consent Judgment, the Parties agree that Le-Vel is a business  
10 entity that has employed ten or more persons at all times relevant to this action, and qualifies as a  
11 “person in the course of business” within the meaning of Proposition 65. Le-Vel distributes and  
12 sells the Covered Products.

13       **1.5**     On February 19, 2016, ERC issued a Proposition 65 Notice of Violation that  
14 was served on the California Attorney General, other public enforcers, and Le-Vel (“First  
15 Notice”). The products identified in the First Notice are 1) “Le-Vel Brands LLC Thrive +Plus  
16 Boost Premium Greens Beverage,” (2) “Le-Vel Brands LLC Thrive Chocolate Lifestyle Mix,”  
17 and (3) “Le-Vel Brands LLC Thrive Premium (Vanilla) Lifestyle Mix.” A true and correct copy  
18 of the Notice is attached as Exhibit A and is hereby incorporated by reference. On September  
19 16, 2016, ERC issued a second Proposition 65 Notice of Violation (“Second Notice”) that was  
20 served on the California Attorney General, other public enforcers, and Le-Vel. The Second  
21 Notice asserts claims as to the additional products: (1) Thrive Apple Pie Lifestyle Mix; and (2)  
22 Thrive Strawberry Lifestyle Mix. The First Notice and Second Notice are collectively referred to  
23 as the “Notices.” The products identified in the Notices of Violation are collectively referred to as  
24 the “Covered Products.”

25       **1.6**     The Complaint is based on allegations contained in the First Notice. Upon Entry of  
26 this Consent Judgment, the Parties stipulate that the Complaint shall be deemed amended as set  
27 forth in the proposed First Amended Complaint filed herewith to include allegations as to the  
28 products identified in the Second Notice such that the operative complaint asserts claims as to all

1 the Covered Products. The Parties further stipulate that the First Amended Complaint be deemed  
2 filed and served on Le-Vel as of the date the Consent Judgment is entered.

3       **1.7**     ERC's Notices, Complaint, and First Amended Complaint allege that use of the  
4 Covered Products exposes persons in California to lead without first providing clear and  
5 reasonable warnings in violation of California Health and Safety Code section 25249.6. Le-Vel  
6 expressly denies all material allegations contained in the Notices, Complaint, and First  
7 Amended Complaint and asserts that all detectable levels of lead (if any) in the Covered  
8 Products are the result of naturally occurring lead as permitted in the California Code of  
9 Regulations. Le-Vel also expressly asserts that the Covered Products are safe for use as  
10 intended, comply with all other applicable health and safety laws, are manufactured using  
11 good manufacturing practices, and that Le-Vel does not add any lead or any other harmful  
12 chemical to the Covered Products.

13       **1.8**     The Consent Judgment resolves claims that are denied and disputed by Le-Vel.  
14 Le-Vel denies the material factual and legal allegations and states that all products it has  
15 manufactured, distributed, or sold in California (including but not limited to Covered Products)  
16 have been and are in compliance with all applicable laws and regulations, including Proposition  
17 65. The Parties have entered into this Consent Judgment in order to settle, compromise and  
18 resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent  
19 Judgment shall constitute or be construed as an admission by any of the Parties, or by any of  
20 their respective officers, directors, shareholders, employees, agents, parent companies,  
21 subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors,  
22 wholesalers, or retailers. Except for the representations made above, nothing in this Consent  
23 Judgment shall be construed as an admission by the Parties of any fact, issue of law, or  
24 violation of law, nor shall compliance with this Consent Judgment be construed as an  
25 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
26 purpose.

27       **1.9**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
28 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any

1 other or future legal proceeding unrelated to these proceedings.

2       **1.10** The Effective Date of this Consent Judgment is the date on which it is entered as  
3 a Judgment by this Court.

4       **2. JURISDICTION AND VENUE**

5       **2.1** For purposes of this Consent Judgment and any further court action that may  
6 become necessary to enforce this Consent Judgment, the Parties stipulate that this Court has  
7 subject matter jurisdiction over the allegations of violations contained in the Complaint and the  
8 First Amended Complaint, personal jurisdiction over Le-Vel as to the acts alleged in the  
9 Complaint, that venue is proper in Alameda County, and that this Court has jurisdiction to enter  
10 this Consent Judgment as a full and final resolution of all claims up through and including the  
11 Effective Date which were or could have been asserted in this action based on the facts alleged in  
12 the Notices, Complaint, and First Amended Complaint.

13       **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

14       **3.1** Any Covered Products that are manufactured six (6) months after the Effective  
15 Date (the "Compliance Date") that Le-Vel thereafter distributes into the State of California,  
16 offers for sale to a third party for retail sale in California, or directly sells in the State of  
17 California, shall either (1) contain no more than 0.5 micrograms of lead per day as calculated  
18 pursuant to Section 3.1.2, excluding allowances pursuant to Section 3.3, and as validated by the  
19 quality control methodology described in Section 3.4; or (2) meet the warning requirements  
20 under Section 3.2.

21       **3.1.1** As used in this Consent Judgment, the term "Distributing into the State  
22 of California" shall mean to directly ship a Covered Product into California for sale in  
23 California or to sell a Covered Product to a distributor that Le-Vel knows will sell the Covered  
24 Product in California.

25       **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure  
26 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
27 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
28 product (using the largest serving size appearing on the product label), multiplied by servings



1 of the product per day (using the largest number of servings in a recommended dosage  
2 appearing on the product label), which equals micrograms of lead exposure per day.

### 3 3.2 Clear and Reasonable Warnings

4 If Le-Vel<sup>1</sup> is required to provide a warning pursuant to Section 3.1, the following warning  
5 (“Warning”) must be utilized:

6 **[California Residents] [Proposition 65] WARNING [for California residents] [under**  
7 **Proposition 65]: This product contains [lead] [,] a chemical known [to the State of**  
8 **California] to cause [cancer and] birth defects or other reproductive harm.**

9 Le-Vel shall use the phrase “cancer and” in the Warning only if the maximum daily dose  
10 recommended on the label contains more than 15 micrograms of lead as determined pursuant to  
11 the quality control methodology set forth in Section 3.4.

12 Le-Vel shall provide the Warning via at least one of the following methods: 1) the  
13 Warning shall be securely affixed to or printed upon the container, cap, or label of each Covered  
14 Product; 2) on the Le-Vel checkout page on their website when a California delivery address is  
15 indicated for any purchase of any Covered Product (“Checkout Page Warning”); 3) on Le-Vel  
16 insert in boxes of Covered Products shipped to California (“Shipping Insert Warning”); 4) on Le-  
17 Vel packing list in boxes of Covered Products shipped to California (“Packing List Warning”);  
18 or 5) on an insert in the individual packaging material (such as a bottle or a carton) containing  
19 the Covered Product itself (“Packaging Material Insert Warning”).

20 For a Checkout Page Warning, a Shipping Insert Warning, or a Packing List Warning,  
21 whenever there are different products listed on the checkout page or contained in the boxes of  
22 Covered Products being shipped, Le-Vel shall identify with an asterisk (or some other  
23 identifying method) each product to which the Warning applies and Le-Vel shall not include a  
24

25  
26 <sup>1</sup> As used in Section 3.2 of this Consent Judgment with respect to the Clear and Reasonable warnings  
27 obligations, the term “Le-Vel” shall include Le-Vel’s—past, present, and future—officers, directors, shareholders,  
28 employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers  
(not including private label customers of Le-Vel), distributors, wholesalers, retailers, and all other upstream and  
downstream entities in the distribution chain of any Covered Product, and the predecessors, successors and assigns  
of any of them.

Warning that does not identify (with an asterisk or some other identifying method) the product to which the Warning applies.

If Le-Vel provides a Shipping Insert Warning, Le-Vel shall provide one insert Warning for each Covered Product in a box or one insert warning that lists all of the Covered Products in the box. The insert Warning must be present on the front of the insert and the insert shall identify each Covered Product with an asterisk. The insert Warning will be a minimum of 5 inches x 7 inches. If Le-Vel provides a Packing List Warning, the packing list shall identify each Covered Product with an asterisk, and the Warning must be present on the front of the packing list. If Le-Vel provides a Shipping Insert Warning or a Packing List Warning, the Covered Products may be returned by the consumer for a refund within 30 days of the invoice date if the consumer references the Warning as a reason for the return.

The Warning shall be at least the same size as the largest of any other health or safety warnings correspondingly appearing on the label, container, cap, insert, packing slip or website as applicable, of such product, and the word "WARNING" shall be in capital letters. Le-Vel must display the above warnings with such conspicuousness, as compared with other words, statements, or design of the label or container, as applicable, to render the warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product.

### **3.3 Reformulated Covered Products**

A Reformulated Covered Product is one in which the Daily Lead Exposure, as determined by 3.12, contains no more than 0.5 micrograms of lead per day as determined by the quality control methodology described in Section 3.4, excluding amounts of naturally occurring lead in the ingredients listed in the table below.

INGREDIENT	NATURALLY OCCURING AMOUNT OF LEAD
Calcium	0.8 micrograms/gram
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram

Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram
Magnesium Hydroxide	0.4 micrograms/gram
Zinc Gluconate	0.8 micrograms/gram
Potassium Chloride	1.1 micrograms/gram
Cocoa Powder	1.0 micrograms/gram

If at any time after the Compliance Date, ERC tests a Reformulated Covered Product and the test results indicate that the Daily Lead Exposure Level is greater than 0.5 micrograms per day, Le-Vel agrees to confidentially supply to ERC, within 30 days of a request from ERC, a list of ingredients, including the percentage of each ingredient of that particular covered product so that ERC may be able to calculate the dialy exposure based on allowances contained in the above table. In the event that a dispute arises with respect to compliance with the terms of this Consent Judgment as to any contribution from naturally occurring lead levels under the Section, the Parties shall employ good faith efforts to seek entry of a protective order that limits public access to and disclosure of the Ingredient List provided. Should a dispute arise, the Parties shall first meet and confer in an effort to fully resovle any dispute.

### **3.4 Testing and Quality Control Methodology**

**3.4.1** Beginning within one year of the Effective Date, Le-Vel shall arrange for lead testing of the Covered Products at least once a year for a minimum of three consecutive years by arranging for testing of five randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user, which Le-Vel intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or "Distributing into California." The testing requirement does not apply to any of the Covered Products for which Le-Vel has provided the warning specified in Section 3.2, such that no testing is required on products for which a warning, as specified in Section 3.2, is provided. If tests conducted pursuant to this Section demonstrate that no warning is required for a Covered

1 Product during each of three consecutive years, then the testing requirements of this Section  
2 will no longer be required as to that Covered Product. Le-Vel shall retain test results for a  
3 period of five years from the date of each test.

4           **3.4.2** For purposes of measuring the "Daily Lead Exposure Level", the  
5 average lead detection result of the five (5) randomly selected samples of the Covered Products  
6 will be controlling.

7           **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
8 laboratory method that complies with the performance and quality control factors appropriate  
9 for the method used, including limit of detection, qualification, accuracy, and precision that  
10 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
11 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
12 method subsequently agreed to in writing by the Parties and approved by the Court through  
13 entry of a modified consent judgment.

14           **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
15 independent third party laboratory certified by the State of California or an independent third-  
16 party laboratory that is registered with the United States Food & Drug Administration and/or  
17 the United States Environmental Protection Agency.

18           **3.4.5** Nothing in this Consent Judgment shall limit Le-Vel's ability to conduct,  
19 or require that others conduct, additional testing of the Covered Products, including the raw  
20 materials used in their manufacture.

21           **3.5 Name Changes.** If Le-Vel changes only the name of a Covered Product  
22 ("Renamed Product"), Le-Vel shall notify ERC in writing of the name change and the Renamed  
23 Product will still qualify as a Covered Product, subject to the Consent Judgment. If the Renamed  
24 Product does not have identical ingredients with the Covered Product or has a different  
25 proportion of ingredients than the Covered Product, the Renamed Product shall not qualify as  
26 Covered Product subject to this Consent Judgment.

#### 27 **4. SETTLEMENT PAYMENT**

28           **4.1** As set forth in this Consent Judgment, Le-Vel denies that it has violated

1 Proposition 65 or any other law in its sale of the Covered Products. Nonetheless, in full  
2 satisfaction of all potential civil penalties and ERC's alleged claims, Le-Vel shall make a  
3 payment of \$180,000.00 ("Total Settlement Amount") in lieu of civil penalties, attorney's fees,  
4 and costs to ERC within 15 days of the Effective Date. Le-Vel shall make this payment by  
5 wire transfer to ERC's escrow account, for which ERC will give Le-Vel the necessary account  
6 information. The Total Settlement Amount shall be apportioned as follows:

7       **4.2**     \$68,235.00 shall be considered a civil penalty pursuant to California Health and  
8 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$51,176.25) of the civil penalty to the  
9 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
10 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
11 Code §25249.12(c). ERC will retain the remaining 25% (\$17,058.75) of the civil penalty.

12       **4.3**     \$4,268.51 shall be distributed to ERC as reimbursement to ERC for reasonable  
13 costs incurred in bringing this action.

14       **4.4**     \$68,235.08 shall be distributed to ERC in lieu of further civil penalties, for the  
15 day-to-day business activities such as (1) continued enforcement of Proposition 65, which  
16 includes work, analyzing, researching and testing consumer products that may contain  
17 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are  
18 the subject matter of the current action; (2) the continued monitoring of past consent judgments  
19 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a  
20 donation of \$3,411.00 to the Center For Environmental Health to address reducing toxic  
21 chemical exposures in California.

22       **4.5**     \$7,115.00 shall be distributed to Michael Freund as reimbursement of ERC's  
23 attorney's fees, \$1,182.50 shall be distributed to Ryan Hoffman as reimbursement of ERC's  
24 attorney's fees, while \$30,963.91 shall be distributed to ERC for its in-house legal fees.

25       **4.6**     In the event that Le-Vel fails to remit the Total Settlement Payment owed under  
26 Section 4 of this Consent Judgment on or before the Due Date, Le-Vel shall be deemed to be in  
27 material breach of its obligations under this Consent Judgment. ERC shall provide written  
28 notice of the delinquency to Le-Vel via electronic mail. If Le-Vel fails to deliver the Total

1 Settlement Payment within seven (7) days from the written notice, the Total Settlement  
2 Payment shall become immediately due and payable and shall accrue interest at the statutory  
3 judgment interest rate provide in the Code of Civil Procedure section 685.010. Additionally,  
4 Le-Vel agrees to pay ERC's reasonable attorney fees and costs for any efforts to collect the  
5 payment due under this Consent Judgment.

6 **5. MODIFICATION OF CONSENT JUDGMENT**

7 **5.1** This Consent Judgment may be modified only (i) by written stipulation of the  
8 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
9 judgment.

10 **5.2** If Le-Vel seeks to modify this Consent Judgment under Section 5.1, then Le-Vel  
11 must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet and  
12 confer regarding the proposed modification in the Notice of Intent, then ERC must provide  
13 written notice to Le-Vel within thirty days of receiving the Notice of Intent. If ERC notifies  
14 Le-Vel in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and  
15 confer in good faith as required in this Section. The Parties shall meet in person or via  
16 telephone within thirty (30) days of ERC's notification of its intent to meet and confer. Within  
17 thirty days of such meeting, if ERC disputes the proposed modification, ERC shall provide to  
18 Le-Vel a written basis for its position. The Parties shall continue to meet and confer for an  
19 additional thirty (30) days in an effort to resolve any remaining disputes. Should it become  
20 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer  
21 period.

22 **5.3** In the event that Le-Vel initiates or otherwise requests a modification under  
23 Section 5.1, and the meet and confer process leads to a joint motion or application of the  
24 Consent Judgment, Le-Vel shall reimburse ERC its costs and reasonable attorney's fees for the  
25 time spent in the meet-and-confer process and filing and arguing the motion or application.

26 **5.4** Where the meet-and-confer process does not lead to a joint motion or  
27 application in support of a modification of the Consent Judgment, then either Party may seek  
28 judicial relief on its own.



1     **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
2     **JUDGMENT**

3         **6.1**     This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
4 this Consent Judgment.

5         **6.2**     If ERC alleges that any Covered Product fails to qualify as a Reformulated  
6 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall  
7 inform Le-Vel in a reasonably prompt manner of its test results, including providing  
8 information sufficient to permit Le-Vel to identify the Covered Products at issue. Le-Vel shall,  
9 within thirty days following such notice, provide ERC with testing information, from an  
10 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,  
11 demonstrating Le-Vel's compliance with the Consent Judgment, if warranted. The Parties shall  
12 first attempt to resolve the matter prior to ERC taking any further legal action.

13     **7.     APPLICATION OF CONSENT JUDGMENT**

14         This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
15 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
16 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,  
17 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
18 application to Covered Products which are distributed or sold exclusively outside the State of  
19 California and which are not used by California consumers.

20     **8.     BINDING EFFECT, CLAIMS COVERED AND RELEASED**

21         **8.1**     This Consent Judgment is a full, final, and binding resolution between ERC,  
22 on behalf of itself and in the public interest, and Le-Vel and its respective officers, directors,  
23 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
24 franchisees, licensees, customers (not including private label customers of Le-Vel), distributors,  
25 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain  
26 of any Covered Product, and the predecessors, successors and assigns of any of them  
27 (collectively, "Released Parties"). ERC hereby fully releases and discharges the Released  
28 Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,

1 penalties, fees, costs and expenses asserted, or that could have been asserted from the handling,  
2 use, or consumption of the Covered Products, as to any alleged violation of Proposition 65 or  
3 its implementing regulations arising from the failure to provide Proposition 65 warnings on the  
4 Covered Products regarding lead up to and including the Effective Date.

5       **8.2**       Le-Vel's compliance with the terms of the Consent Judgment constitutes  
6 compliance with Proposition 65 with respect to all alleged exposures to lead from the Covered  
7 Products for itself and the other Released Parties. ERC on its own behalf, on one hand, and Le-  
8 Vel on its own behalf, on the other, further waive and release any and all claims they may have  
9 against each other for all actions or statements made or undertaken in the course of seeking or  
10 opposing enforcement of Proposition 65 in connection with the Notices, Complaint, or First  
11 Amended Complaint up through and including the Effective Date, provided, however, that  
12 nothing in Section 8 shall affect or limit any Party's right to seek to enforce the terms of this  
13 Consent Judgment.

14       **8.3**       It is possible that other claims not known to the Parties arising out of the facts  
15 alleged in the Notice, Complaint, or First Amended Complaint and relating to the Covered  
16 Products will develop or be discovered. ERC on behalf of itself only, on one hand, and Le-Vel,  
17 on the other hand, acknowledge that this Consent Judgment is expressly intended to cover and  
18 include all such claims up through the Effective Date, including all rights of action therefore.  
19 ERC and Le-Vel acknowledge that the claims released in Sections 8.1 and 8.2 above may  
20 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any  
21 such unknown claims. California Civil Code section 1542 reads as follows:

22       A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
23       CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
24       FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
25       KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
26       OR HER SETTLEMENT WITH THE DEBTOR.

25       ERC on behalf of itself only, on the one hand, and Le-Vel, on the other hand, acknowledge and  
26       understand the significance and consequences of this specific waiver of California Civil Code  
27       section 1542.

1           **8.4**   Nothing in this Consent Judgment is intended to apply to any occupational or  
2 environmental exposures arising under Proposition 65, nor shall it apply to any of Le-Vel's  
3 products other than the Covered Products.

4           **9.   SEVERABILITY OF UNENFORCEABLE PROVISIONS**

5           In the event that any of the provisions of this Consent Judgment are held by a court to be  
6 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

7           **10.   GOVERNING LAW**

8           The terms and conditions of this Consent Judgment shall be governed by and construed in  
9 accordance with the laws of the State of California.

10          **11.   PROVISION OF NOTICE**

11          All notices required to be given to either Party to this Consent Judgment by the other shall  
12 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via  
13 email may also be sent.

14          **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

15 Chris Heptinstall, Executive Director, Environmental Research Center  
16 3111 Camino Del Rio North, Suite 400  
17 San Diego, CA 92108  
18 Tel: (619) 500-3090  
19 Email: chris\_erc501c3@yahoo.com

20          With a copy to:

21 Michael Freund  
22 Ryan Hoffman  
23 Michael Freund & Associates  
24 1919 Addison Street, Suite 105  
25 Berkeley, CA 94704  
26 Telephone: (510) 540-1992  
27 Facsimile: (510) 540-5543

28          **LE-VEL BRANDS LLC**

Drew S. Hoffman  
9201 Warren Pkwy Suite 200  
Frisco, TX 75035  
Email: drew.hoffman@le-vel.com

1 With a copy to:  
2 Daniel B. Chammas  
3 FORD HARRISON LLP  
4 350 S Grand Ave Ste 2300  
5 Los Angeles, CA 90071  
6 Telephone: (310) 237-2442  
7 Email: dchammas@fordharrison.com

## 8 **12. COURT APPROVAL**

9 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
10 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
11 Consent Judgment.

12 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
13 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
14 prior to the hearing on the motion.

15 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
16 void and have no force or effect.

## 17 **13. EXECUTION AND COUNTERPARTS**

18 This Consent Judgment may be executed in counterparts, which taken together shall be  
19 deemed to constitute one document. A facsimile or .pdf signature shall be construed as valid as  
20 the original signature.

## 21 **14. DRAFTING**

22 The terms of this Consent Judgment have been reviewed by the respective counsel for each  
23 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
24 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
25 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
26 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
27 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
28 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
equally in the preparation and drafting of this Consent Judgment.

1     **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

2             If a dispute arises with respect to either Party's compliance with the terms of this Consent  
3 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in  
4 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be  
5 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

6     **16. ENFORCEMENT**

7             A Party may, by motion or order to show cause before the Superior Court of Alameda  
8 County, enforce the terms and conditions contained in this Consent Judgment provided that such  
9 Party first undertake a good faith effort to resolve the dispute informally as set forth in this  
10 Consent Judgment. In any action brought by a Party to enforce this Consent Judgment, the Party  
11 may seek whatever fines, costs, penalties, or remedies as are provided by law for failure to  
12 comply with the Consent Judgment. To the extent the failure to comply with the Consent  
13 Judgment constitutes a violation of Proposition 65 or other laws, a Party shall not be limited to  
14 enforcement of this Consent Judgment, but may seek in another action whatever fines, costs,  
15 penalties, or remedies as are provided by law for failure to comply with Proposition 65 or other  
16 laws.

17    **17. ENTIRE AGREEMENT, AUTHORIZATION**

18            **17.1** This Consent Judgment contains the sole and entire agreement and  
19 understanding of the Parties with respect to the entire subject matter herein, and any and all  
20 prior discussions, negotiations, commitments and understandings related hereto. No  
21 representations, oral or otherwise, express or implied, other than those contained herein have  
22 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
23 herein, shall be deemed to exist or to bind any Party.

24            **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
25 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
26 explicitly provided herein, each Party shall bear its own fees and costs.  
27  
28

1 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
2 **CONSENT JUDGMENT**

3 This Consent Judgment has come before the Court upon the request of the Parties. The  
4 Parties request the Court to fully review this Consent Judgment and, being fully informed  
5 regarding the matters which are the subject of this action, to:

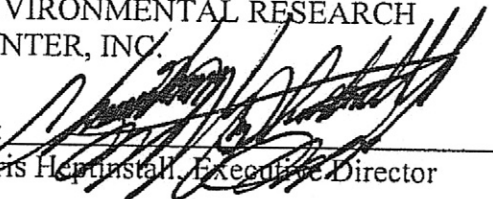
6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
7 equitable settlement of all matters raised by the allegations of the Complaint and First Amended  
8 Complaint, that the matter has been diligently prosecuted, and that the public interest is served by  
9 such settlement; and

10 (2) Make the findings pursuant to California Health and Safety Code section  
11 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

12 **IT IS SO STIPULATED:**

13 Dated: 9/21/, 2016

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Heptinstall, Executive Director

16 Dated: \_\_\_\_\_, 2016

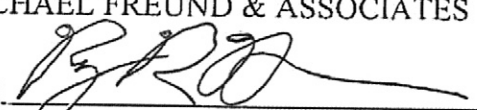
LE-VEL BRANDS LLC

By:  
Its:

20 **APPROVED AS TO FORM:**

21 Dated: 9/21, 2016

MICHAEL FREUND & ASSOCIATES

By:   
Michael Freund  
Ryan Hoffman  
Attorneys for Plaintiff Environmental  
Research Center, Inc.



18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF  
CONSENT JUDGMENT

This Consent Judgment has come before the Court upon the request of the Parties. The Parties request the Court to fully review this Consent Judgment and, being fully informed regarding the matters which are the subject of this action, to:

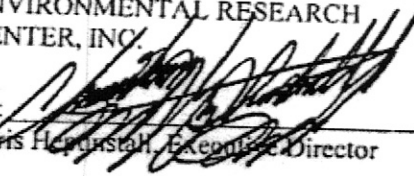
(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint and First Amended Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

IT IS SO STIPULATED:

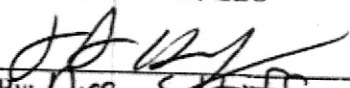
Dated: 9/21, 2016

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Heppelstahl, Executive Director

Dated: 9-22, 2016

LE-VEL BRANDS LLC

By:   
Its: Chief Legal Officer

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2016

MICHAEL FREUND & ASSOCIATES

By: \_\_\_\_\_  
Michael Freund  
Ryan Hoffman  
Attorneys for Plaintiff Environmental  
Research Center, Inc.

1 Dated: 9/21, 2016

FORD HARRISON LLP

2 By: 

3 Daniel B. Chammas  
4 Attorney for Defendant Le-Vel Brands  
5 LLC

6  
7 **ORDER AND JUDGMENT**

8 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is  
9 approved and Judgment is hereby entered according to its terms.

10 IT IS SO ORDERED, ADJUDGED AND DECREED.

11  
12 Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
13 Judge of the Superior Court

1 Dated: \_\_\_\_\_, 2016

FORD HARRISON LLP

2 By: \_\_\_\_\_  
3 Daniel B. Chammas  
4 Attorney for Defendant Le-Vel Brands  
5 LLC

6  
7 **ORDER AND JUDGMENT**

8 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is  
9 approved and Judgment is hereby entered according to its terms.

10 IT IS SO ORDERED, ADJUDGED AND DECREED.

11  
12 Dated: \_\_\_\_\_, 2016

13 \_\_\_\_\_  
Judge of the Superior Court

EXHIBIT A

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.5543

**Michael Freund, Esq.**  
**Ryan Hoffman, Esq.**

OF COUNSEL:  
**Denise Ferkich Hoffman, Esq.**

February 19, 2016

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**Le-Vel Brands LLC**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- **Le-Vel Brands LLC Thrive +Plus Boost Premium Greens Beverage - Lead**
- **Le-Vel Brands LLC Thrive Chocolate Lifestyle Mix - Lead**
- **Le-Vel Brands LLC Thrive Premium Lifestyle Mix - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to this

February 19, 2016

Page 2

chemical has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least February 19, 2013, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Le-Vel Brands LLC and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)



**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Le-Vel Brands LLC**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.


2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: February 19, 2016

  
\_\_\_\_\_  
Michael Freund

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On February 19, 2016, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Le-Vel Brands LLC  
9201 Warren Parkway, Suite 200  
Frisco, TX 75035

Current President or CEO  
Le-Vel Brands LLC  
1545 South 4800 West  
Salt Lake City, UT 84104

Current President or CEO  
Le-Vel Brands LLC  
3346 Ricci Lane  
Irving, TX 75062

Jason Camper  
(Le-Vel Brands LLC's Registered  
Agent for Service of Process)  
9201 Warren Parkway, Suite 200  
Frisco, TX 75035

Current President or CEO  
Le-Vel Brands LLC  
6542 Gerrard Street  
Frisco, TX 75034

On February 19, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On February 19, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On February 19, 2016, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on February 19, 2016, in Fort Oglethorpe, Georgia.

---

Phyllis Dunwoody

Service List

District Attorney, Alameda  
County  
1225 Fallon Street, Suite 900  
Oakland, CA 94612

District Attorney, Alpine  
County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador  
County  
708 Court Street  
Jackson, CA 95642

District Attorney, Butte  
County  
25 County Center Drive, Suite  
245  
Oroville, CA 95965

District Attorney, Calaveras  
County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa  
County  
346 Fifth Street Suite 101  
Colusa, CA 95932

District Attorney, Del Norte  
County  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney, El Dorado  
County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno  
County  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

District Attorney, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial  
County  
940 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings  
County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Los Angeles  
County  
210 West Temple Street, Suite  
18000  
Los Angeles, CA 90012

District Attorney, Madera  
County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin  
County  
3501 Civic Center Drive,  
Room 130  
San Rafael, CA 94903

District Attorney, Mariposa  
County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino  
County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced  
County  
550 W. Main Street  
Merced, CA 95340

District Attorney, Modoc  
County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Nevada  
County  
201 Commercial Street  
Nevada City, CA 95959

District Attorney, Orange  
County  
401 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer  
County  
10810 Justice Center Drive,  
Ste 240  
Roseville, CA 95678

District Attorney, Plumas  
County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, San Benito  
County  
419 Fourth Street, 2nd Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
316 N. Mountain View  
Avenue  
San Bernardino, CA 92415-  
0004

District Attorney, San Diego  
County  
330 West Broadway, Suite  
1300  
San Diego, CA 92101

District Attorney, San Joaquin  
County  
222 E. Weber Ave. Rm. 202  
Stockton, CA 95202

District Attorney, San Luis  
Obispo County  
1035 Palm St, Room 450  
San Luis Obispo, CA 93408

District Attorney, San Mateo  
County  
400 County Ctr., 3rd Floor  
Redwood City, CA 94063

District Attorney, Santa  
Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Cruz  
County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
County  
PO Box 457  
Downieville, CA 95936

District Attorney, Siskiyou  
County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano  
County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Stanislaus  
County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter  
County  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama  
County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tuolumne  
County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Yuba  
County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

Los Angeles City Attorney's  
Office  
City Hall East  
200 N. Main Street, Suite 800  
Los Angeles, CA 90012

San Diego City Attorney's  
Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco, City Attorney  
City Hall, Room 234  
1 Dr Carlton B Goodlett PL  
San Francisco, CA 94102

San Jose City Attorney's  
Office  
200 East Santa Clara Street,  
16th Floor  
San Jose, CA 95113

**Appendix A**

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “Proposition 65”). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

*WHAT DOES PROPOSITION 65 REQUIRE?*

**The “Proposition 65 List.”** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

[http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and

reasonable.” This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Periods.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.



***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

***Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.*** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

### ***HOW IS PROPOSITION 65 ENFORCED?***

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

The notice is reproduced here:

Date: February 19, 2016

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

## **SPECIAL COMPLIANCE PROCEDURE**

### **PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

**The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:**

1. You have actually taken the corrective steps that you have certified in this form
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

### **PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

☐ Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

☐ A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

☐ Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

☐ Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

### **IMPORTANT NOTES:**

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date: February 19, 2016

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.  
Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108  
Phone number: 619-500-3090

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- ☐ Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- ☐ Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- ☐ Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

**Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

\_\_\_\_\_  
Signature of alleged violator or authorized representative Date

\_\_\_\_\_  
Name and title of signatory

***FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .***

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

<sup>2</sup> See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

## **HISTORY**

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
  2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
  3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
  4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
  5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).
- This database is current through 9/18/15 Register 2015, No. 38
- 27 CCR Appendix A, 27 CA ADC Appendix A